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# Letter dated 26 July 2002 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council

On 23 July 2002, I received a copy of the report from the Prosecutor of the International Tribunal for Rwanda, which was also brought to the attention of the Security Council. In that report, the Prosecutor complains of lack of cooperation from the Rwandan authorities and, in particular, describes how the lack of availability of witnesses from Rwanda is likely to hamper the judicial work of the International Tribunal and hinder the Prosecutor's investigations.

Under article 28 of the statute, the President of the International Tribunal has general discretion formally to bring to the attention of the Security Council concerns that might exist regarding the cooperation of States, or their compliance without undue delay with any request for assistance or any order issued by a Trial Chamber relating to the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

The Prosecutor's report sets out in detail the problems that have arisen in respect of requests for cooperation and assistance made by the Prosecutor and the Trial Chambers. In particular, the Judges of the International Tribunal for Rwanda are concerned because three cases (the Kajelijeli, Nyitegeka and Butare cases) have already been postponed on numerous occasions this year owing to the unavailability of witnesses from Rwanda. Two Trial Chambers have issued decisions drawing attention to the Rwandan Government's failure to issue travel documents in a timely manner so that witnesses could appear before the International Tribunal. Both decisions have been brought to the notice of the Rwandan Government. Copies of those decisions are attached to this letter (see annexes).

In the light of past difficulties, it is uncertain that the trials scheduled to resume in the coming sessions will be able to do so without the intervention of the Security Council.

The Security Council created the International Tribunal for Rwanda because it was convinced that the prosecution of persons responsible for genocide and other

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serious violations of international humanitarian law was necessary for the restoration and maintenance of international peace and security.

I respectfully submit that it is necessary for the Security Council to use such measures as it thinks are appropriate to ensure that the International Tribunal for Rwanda can meet the mandate it has been given.

(*Signed*) Judge Navanethem **Pillay**
President

Annex I

**Prosecutor v. Nyitegeka: Decision to adjourn proceedings due to the unavailability of witnesses**

**TRIAL CHAMBER I**

Or: ENG

Before: Judge Navanethem Pillay, Presiding
Judge Erik Mpse
Judge Andrésia Vaz

Registry: Adama Dieng

Date: 19 June 2002

**THE PROSECUTOR**
**v.**
**ELIEZER NIYITEGEKA**
**Case No. ICTR-96-14-T**

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**DECISION TO ADJOURN PROCEEDINGS DUE TO THE UNAVAILABILITY OF WITNESSES**

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Trial Chamber I is seized of the notification from the Prosecutor relating to the availability of witnesses. The Prosecutor informed the Chamber that no further witnesses for the Prosecution are available for the rest of this week and for an indeterminate period thereafter. In effect, the Prosecution is seeking a directive from the Chamber on the further progress of this trial and an adjournment of the trial, which appears to be inevitable.

This Trial Chamber has a heavy roll of three cases. By way of careful planning, and precise use of all available time, the Chamber, in response to requests for a trial date from both the Prosecutor and Defence Counsel for Mr Elizier Niyitegeka, scheduled two weeks in June 2002, from 17 to 28 June for the hearing of 14 witnesses. 7 witnesses from Rwanda were expected to testify this week. Instead, only one witness arrived.

The non-appearance of the witnesses has caused an upset in the careful planning of trial dates and represents a severe set back to the judicial work of the Tribunal.

We have heard the reasons advanced by Mr Fleming for the Prosecution. We have also caused an investigation to be undertaken by the Registrar and the WVSS-P.
The following facts have come to light:

Since Friday 7 June 2002, the WVSS-P has experienced new difficulties in bringing protected witnesses from Rwanda to trials in the ICTR. The Government of Rwanda had suddenly and without prior notification to the Tribunal, implemented new procedures for the travel of witnesses. The rules oblige witnesses personally to travel to various offices and police authorities in their local areas and obtain three or more clearance documents, namely: *"bon conduct"*, "proof of identity" and *"attestations de non-poursuite"*, before the necessary laissez-passers will be issued to enable them to travel out of Rwanda.

These impositions not only expose protected witnesses but are also not at all clear. For instance, the Director General of Immigration informed the WVSS that the *"Attestation de Non Poursuite"* are obtainable from the Prefecture Offices or the General Prosecutor of the Province/ Prefecture.

The Office of the Provincial Commissioner was contacted who informed WVSS that it was the Office of the Provincial Prosecutor General that would be issuing these certificates. On contacting the latter, they were told that the Office of the Prosecutor General used to issue these certificates in the past, but was no longer doing so – that it was now the Judicial Police who will issue them. Until now, no clear results have emerged. No note of the requirements has been made public nor has the Director General responded to written requests from WVSS for a note of their requirement.

The Tribunal's aircraft made two scheduled trips to Rwanda only to return empty. This is significant wasted expenditure, which the Tribunal can ill-afford.

As a consequence of the actions taken by the Rwandan Government, two trials, this case of Elizier Niyitegeka and the Butare Case before Trial Chamber II, have ground to a stand still and valuable court time is being lost.

The Statute of the Tribunal is binding upon all states. Article 28 of the Statute states that: "states shall cooperate with the International Criminal Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". All states shall also comply without undue delay, with any request for assistance or an order issued by a Trial Chamber. The binding nature of orders to States pursuant to Article 28 of the Statute derives from Chapter VII and Article 25 of the United Nations Charter and Security Council resolutions adopted pursuant thereto.

Rule 56 of the Rules states that:

*The State to which a warrant of arrest or a transfer order for a witness is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 28 of the Statute.*

More specifically, Rule 58 of the Rules provides:

*The obligations laid out in Article 28 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a witness to the Tribunal, which may exist under the national law or extradition treaties of the States concerned.*

**THE CHAMBER:**

**DRAWS** the attention of the Rwandan Authorities to these legal obligations to cooperate with the Tribunal.

The Chamber is compelled to adjourn the proceedings after completion of the testimony of GK, to Monday, 24 June 2002.

**REQUESTS** the Rwandan Authorities to ensure that the travel of the witnesses scheduled for these cases is facilitated so that the trial can resume without further delay, on Monday.

**DIRECTS** the Registrar to transmit a copy of this Decision as soon as possible to the Government of Rwanda or if necessary to any authority charged with the task of permitting or facilitating the appearance of witnesses before the International Criminal Tribunal for Rwanda (ICTR).

Done at Arusha, this 19th day of June 2002

Judge Navanethem Pillay
Presiding

Judge Erik Møse

Judge Andrésia Vaz

## Annex II

### The Prosecutor v. Pauline Nyiramasuhuko et al.: Text of oral decision, 19 June 2002

Text of an Oral Decision rendered by the Judges of Trial Chamber II 19 June 2002 in the Butare case. **For the official version, please make reference to the transcripts of the proceedings.**

*"The Statute of this Tribunal is binding upon all states. In order to comply with Article 28 of the Statute, all states must cooperate with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. All states must also comply without undue delay with any request for assistance or an order issued by a Trial Chamber.*

*Rule 55 of the Rules states that: The State to which a warrant of arrest or a transfer order for a witness is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 28 of the Statute.*

*More specifically, Rule 58 of the Rules provides: The obligations laid out in Article 28 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the States concerned.*

*The Trial Chamber has been informed by the Registry that the Rwandan Authorities have established new legal procedures regarding the issuance of travel documentation for witnesses residing in Rwanda. These procedures directly affect witnesses scheduled to appear before the tribunal. The implementation of these new procedures has resulted in the inability of this Chamber to continue with trial due to the unavailability of witnesses. It should be however noted that those procedures cannot take precedence over the State obligations under Article 28 of the Statute as spelt out in Rule 58 of the Rules.*

*In the light of the foregoing, this Chamber asks the Rwandan Authorities to meet their legal obligations to facilitate the work of this tribunal and to ensure that witnesses are able to travel to Arusha to allow the tribunal to continue its work by Monday 24 June 2002.*

*The Registry should ensure that the Rwandan Authorities are informed accordingly."*